

- I. Claims 1-9 and 49-51, drawn to an evaporation mask apparatus, classified in class 118, subclass 504.
- II. Claims 10-41, drawn to a method of manufacturing an organic electroluminescent device, classified in class 445, subclass 25.
- III. Claims 42-48, drawn to an organic electroluminescent device, classified in class 313, subclass 512.

It is respectfully requested that the Examiner confirm whether this is how the Examiner intended to group the claims in the next Office Action.

The Examiner set forth two conditional requirements for an election of species on page 3 of the Office Action, both of which are purported to apply if the invention of Group I is elected. However, the second conditional requirement for an election of species actually applies if the invention of Group II is elected since claims 10-41 which are subject to this conditional requirement belong to Group II.

Furthermore, the first conditional requirement for election of species which applies if the invention of Group I is elected is incomplete because it does not mention claims 49-50 which are presumed to belong to Group I as discussed above. Accordingly, it is respectfully requested that the Examiner modify the first conditional requirement for an election of species to include claims 49-50 in the next Office Action.

II. Provisional Election of Claims Pursuant to 37 CFR 1.142 and 1.146

Applicants provisionally elect **Group II, claims 10-41**, in response to the restriction requirement set forth on page 2 of the Office Action, and provisionally elect **Species I, claims 10-22 and 34-38, Fig. 13, together with linking claims 26-30 which link together the inventions of Species I and II**, in response to the second conditional requirement for an election of species set forth on page 3 of the Office Action which is applicable if the invention of Group II is elected as discussed above.

Linking claims 26-30 are discussed below in Section IV in which the Applicants traverse the requirement for an election of species with respect to the invention of Group II.

III. Applicants Traverse the Restriction Requirement

The Examiner considers the inventions of Groups I and II to be related as process (Group II) and apparatus for its practice (Group I), and considers these inventions to be distinct

pursuant to MPEP 806.05(e) because "the process can be practiced by use of a plurality of evaporation masks to form the features of the device as oppose [sic] to the one mask such as the claimed apparatus." However, the Examiner has apparently overlooked the fact that MPEP 806.05(e) requires the Examiner to show that the process as claimed can be practiced by another materially different apparatus.

Independent claim 1 of Group I (the apparatus) reads as follows:

1. An evaporation mask formed of a thin film, wherein the evaporation mask is drawn taut by application of tension and comprises:
 - at least one mask unit, comprising:
 - a plurality of main apertures, and
 - a plurality of first dummy apertures formed adjacent to outermost ones of the main apertures in a direction in which tension is applied to the evaporation mask.

Independent claim 10 of Group II (the process) reads as follows (underlining added):

10. A method of manufacturing an organic electroluminescent (EL) device, the method comprising:
 - forming first electrodes on a substrate;
 - disposing an evaporation mask to form an organic film over the substrate, the evaporation mask drawn taut by application of tension and having at least one mask unit, the mask unit comprising a plurality of main apertures and a plurality of first dummy apertures formed adjacent to outermost ones of the main apertures in a direction in which tension is applied to the evaporation mask;
 - forming the organic film comprising an effective luminescent area to cover at least the first electrodes by evaporating an organic material containing an organic luminescent material through the main apertures, and forming a first dummy pattern area outside the effective luminescent area through the first dummy apertures;
 - forming second electrodes on the organic film so that the effective luminescent area is formed at an area where the first and second electrodes overlap; and
 - sealing the resulting structure.

The portion of claim 10 underlined above is the evaporation mask claimed in claim 1. Accordingly, it is submitted that the process as claimed in claim 10 requires the process to be

practiced using the apparatus of claim 1. If the process were to be practiced "by use of a plurality of evaporation masks to form the features of the device as oppose [sic] to the one mask such as the claimed apparatus" as proposed by the Examiner, the resulting process would no longer be the process as claimed in claim 10.

For at least the reasons discussed above, it is submitted that the Examiner has not shown that the inventions of Groups I and II are distinct in the manner required by MPEP 806.05(e). Accordingly, it is submitted that the requirement for restriction between the inventions of Groups I and II is improper, and it is respectfully requested that this restriction requirement be withdrawn.

The Examiner considers the inventions of Groups II and III to be related as process of making (Group II) and product made (Group III), and considers these inventions to be distinct pursuant to MPEP 806.05(f) because "the electroluminescence device can be formed using a plurality of evaporation masks as oppose [sic] to the one mask as claimed in the method."

However, it is believed that claims 42-48 of Group III are so closely related to elected claims 10-22 and 34-38 of Group II that they should remain in the same application. Elected claims 10-22 and 34-38 of Group II are drawn to a method of manufacturing an organic luminescent (EL) device, and claims 42-48 of Group III are drawn to an organic EL device. There have been no references cited to show any necessity for requiring restriction and, in fact, it is believed that the Examiner would find references containing both process and product claims in the same field of technology. While it is noted that the Examiner has identified different classifications for the process and product claims, it is believed that classification is not conclusive on the question of restriction. It is believed, moreover, that search and examination of both sets of claims would not be a serious burden on the Examiner at this time in comparison with the additional expense and delay to Applicants in having to protect the additional subject matter recited by the Group III claims by filing a divisional application.

The Examiner considers the inventions of Groups I and III to be related as apparatus (Group I) and product made (Group III), and considers these inventions to be distinct pursuant to MPEP 806.05(g) because "the electroluminescence device can be formed using a plurality of evaporation masks as oppose [sic] to the one mask such as the apparatus."

However, it is believed that claims 1-9 and 49-51 of Group I are so closely related to claims 42-48 of Group III that they should remain in the same application. Claims 1-9 and 49-51

Group I are drawn to an evaporation mask or a mask unit for an evaporation mask, and claims 42-48 of Group III are drawn to an organic EL device. There have been no references cited to show any necessity for requiring restriction and, in fact, it is believed that the Examiner would find references containing both apparatus and product claims in the same field of technology. While it is noted that the Examiner has identified different classifications for the apparatus and product claims, it is believed that classification is not conclusive on the question of restriction. It is believed, moreover, that search and examination of both sets of claims would not be a serious burden on the Examiner at this time in comparison with the additional expense and delay to Applicants in having to protect the additional subject matter recited by the Group III claims by filing a divisional application.

Furthermore, MPEP 803 sets forth the following two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) The inventions must be independent (see MPEP § 802.01, § 806.06, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(j)); and
- (B) There would be a serious burden on the examiner if restriction is not required (see MPEP § 803.02, § 808, and § 808.02).

However, it is submitted that the Examiner did not address criterion (B) in the Office Action because the Examiner did not even allege that it would be a serious burden on the Examiner to search and examine all of claims 1-51 in the present application. In light of this, it is submitted that the Examiner has not established that it would be a serious burden on the Examiner to search and examine all of claims 1-51 in the present application in the manner required by MPEP 803. Accordingly, it is submitted that the requirement for restriction between the inventions of Groups I, II, and III is improper, and it is respectfully requested that this restriction requirement be withdrawn.

Upon review of references involved in this field of technology, when considering that the Group I claims are drawn to an evaporation mask or a mask unit for an evaporation mask, the Group III claims are drawn to an organic EL device, and elected claims 10-22 and 34-38 of Group II are drawn to a method of manufacturing an organic luminescent (EL) device, and when all of the other various facts are taken into consideration, it is believed that upon reconsideration of the Examiner's restriction requirement, all of the pending claims should be examined in the present application.

IV. Applicants Traverse the Conditional Requirement for an Election of Species With Respect to the Invention of Group II

The Examiner set forth a conditional requirement for an election of species if the invention of Group II is elected, stating as follows:

If Group I [sic: II] is elected, a restriction directed to the following patentably distinct species of the claimed invention applies as follows;

- I. Claims 10-22 & 34-38, figure 13.
- II. Claims 23-33 & 39-41, figure 18.

Claims 10-22 and 34-38 of Species I recite first dummy apertures which are shown in at least Fig. 13 which the Examiner considers to represent Species I, while claims 12-14, 17-22, and 36-38 of Species I are dependent claims which additionally recite second dummy apertures which are shown in at least Fig. 18 which the Examiner considers to represent Species II. Thus, claims 12-14, 17-22, and 36-38 of Species I are linking claims which link together the inventions of Species I and II.

Claims 23-33 and 39-41 of Species II recite second dummy apertures which are shown in at least Fig. 18 which the Examiner considers to represent Species II, while claims 26-27 (and thus claims 28-30 depending from claim 26) of Species II are dependent claims which additionally recite first dummy apertures which are shown in at least Fig. 13 which the Examiner considers to represent Species I. Thus, claims 26-30 of Species II are linking claims which link together the inventions of Species I and II.

As discussed above in Section II, the applicants provisionally elect **Group II, claims 10-41**, and provisionally elect **Species I, claims 10-22 and 34-38, Fig. 13, together with linking claims 26-30**. Pursuant to MPEP 809, it is submitted that the Examiner is required to consider linking claims 26-30 together with elected claims 10-22 and 34-38.

Furthermore, in light of the extensive linkage between the inventions of Species I and II as represented by linking claims 12-14, 17-22, 26-30, and 36-38 (i.e., 17 of the 32 claims directed to the inventions of Species I and II are linking claims linking together these two inventions), it is believed that upon reconsideration of the Examiner's requirement for an election of species, all of claims 10-41 of Group II (i.e., claims 10-22 and 34-38 of Species I as well as claims 23-33 and 39-41 of Species II) should be examined in the present application.

V. Conclusion

In view of the foregoing remarks, all claims are deemed to be allowable and this application is believed to be in condition for allowance.

If any fees are required in connection with the filing of this paper, please charge the same to our deposit account number 503333.

Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

Respectfully submitted,

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